

MISC. CRIMINAL APPLICATION NO. 578 OF 1992.

Date of decision: 20.6.1997.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. V.P. Thakkar, advocate for the petitioners.

A.P.P. for respondent No.1-State.

Mr. R.S. Pandya, advocate for respondent No.2.

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain,J.

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June 20, 1997.

Oral judgment:

The petitioners/original accused have filed this application under Section 482 of the Criminal Procedure Code for quashing complaint being M. Case No. 54 of 1990 filed by respondent No.2 in the Court of the learned Chief Judicial Magistrate, Vadodara under Section 406, 418, 420, 424, 504, 506 (2) and 114 of the Indian Penal Code.

Before dealing the matter on merits it would be worthwhile to advert to the facts giving rise to this

matter.

That the petitioners No.1 and 2 are the owner of property situated in the City of Vadodara, bearing No.B.1/4, Survey No.5A admeasuring about 9133 sq.ft. An agreement to sell dated 14.9.1989 was entered into between the respondent No.2-original complainant and the petitioners No.1 and 2/original accused Nos.1 and 2. According to the agreement the total consideration was agreed at Rs.14,00,000/- out of which Rs.1,40,000/- was paid as banakhat amount and rest of the amount of Rs.12,60,000/- was to be paid within six months from the date of agreement and the conveyance deed was to be executed after completing formalities required under law i.e., title clearance, etc. As the parties could not adhere to the schedule of six months, the petitioner Nos.1 and 2 served notice dated 19.3.1990 to the respondent No.2 stating that the respondent No.2 has failed to fulfil his reciprocal mutual obligation under the agreement to sell and has committed breach of various terms and conditions and the agreement to sell dated 14.9.1989 stands rescinded. On receipt of notice, respondent No.2 filed Special Civil Suit on 23.3.1990 in the Court of Civil Judge (S.D.) at Vadodara for specific performance of the said agreement as well as for injunction.

From the record it transpires that despite filing of civil suit for specific performance of the agreement for sale in question, the respondent No.2 also filed criminal complaint on 26.3.1990 on the same allegations. In the criminal complaint present petitioners No.3 and 4 i.e., wives of petitioners No.1 and 2 respectively, have also been impleaded as accused. The learned Magistrate directed investigation under Section 156 (3) of the Criminal Procedure Code with further direction to submit report on or before 7.5.1990. Having come to know about institution of the aforesaid complaint, the petitioners/original accused have moved this court under Section 482 of the Criminal Procedure Code for exercise of inherent jurisdiction and for quashing the complaint and proceedings.

At the outset it may be stated that the petitioners No.3 and 4 are not party to the agreement to sell. At the same time, on perusal of complaint it clearly transpires that no allegations are made against petitioners No.3 and 4. In absence of any clear and specific allegations against petitioners No.3 and 4, I find no reason for the respondent No.2 to file complaint involving them in the so-called offences. Thus, complaint against petitioners

No.3 and 4 appears to have been filed with some malafide and ulterior motive only with a view to pressurise the petitioners No.1 and 2 to succumb to the desire of the respondent No.2. Since on plain reading of complaint and taking allegation at its face value no case is made out against the petitioners No.3 and 4, the complaint deserves to be quashed against the petitioners No.3 and 4 without going into the merits of the matter.

As discussed above, even if the allegations made in the complaint are accepted at their face value do not give rise to any criminal liability. Even if all these facts are accepted without being controverted one can safely say that the dispute between the parties is purely of civil nature and is arising owing to breach of agreement. Even the respondent No.2 has also taken recourse to civil remedy by filing civil suit in the court of competent jurisdiction for specific enforcement of the agreement in question. Thus, under these circumstances, filing of complaint is nothing else but abuse of process of law only with a view to harass and pressurise the petitioners/accused for settling the scores on civil side. It is needless to say that as the respondent No.2/original complainant did not abide by various terms and conditions of the agreement, the petitioners/original accused revoked the agreement by issuing notice well in advance as contemplated in the agreement. Since the jurisdiction of civil Court has already been invoked, it will be for the Civil Court to decide the lis between the parties which is of civil nature and nonetheless gives rise to any criminal action. Consequently, even continuance of criminal proceedings initiated by respondent No.2 would be dehors the provisions of law and in abuse of process of court. In the result, it is a fit case wherein inherent powers under Section 482 of the Criminal Procedure Code deserve to be exercised and quash the complaint.

In the result, the petition is allowed. Rule is made absolute in terms of para 9 (A) of the petition and the complaint being M. Case No. 54/90 pending in the court of the learned Chief Judicial Magistrate, Vadodara is hereby quashed and set aside.